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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,042	04/13/2001	Masanori Matsuura	OAC-011	5952

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LAHIVE & COCKFIELD, LLP.

28 STATE STREET
BOSTON, MA 02109

EXAMINER

MCLEAN MAYO, KIMBERLY N

ART UNIT	PAPER NUMBER
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2187

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/835,042	Applicant(s) MATSUURA ET AL.	
	Examiner Kimberly N. McLean-Mayo	Art Unit 2187	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27 and 28 is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The enclosed detailed action is in response to the Amendment submitted on June 28, 2004.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al. (USPN: 6,341,239) in view of Bapat (USPN: 5,862,326) and Frazier (USPN: 6,609,165).

Regarding claims, 1-3, 5, 7-9, 11, 13-15, 19-20 and 22, Hayashi discloses a rewriting device (Figure 1, Reference 14) for rewriting data stored in a non-volatile memory (Figure 1, Reference 20) of a vehicle controller (Figure 1, Reference 2), wherein the rewriting device is capable of communicating with the vehicle controller (C 3, L 43-46; C 4, L 33-44). However, Hayashi does not disclose the rewriting device configured to determine that communication between the rewriting device and the vehicle controller is offline when no response is received from the vehicle controller within a first determination time; wherein when a deleting/writing operation of data is being performed, the rewriting device is configured to prohibit the determination of offline until a second determination time elapses, the second determination time being greater than the first determination time, wherein if no response is received from the vehicle controller within the second determination time, which is the time necessary to delete data stored in the

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memory/write data in the memory, it is determined that communication is offline. Bapat teaches the concept of determining that communication between two devices (client/server) is offline (C 1, L 40-42 - a condition which is preventing the server from responding) when no response is received from the server device within a first predetermined time period (TIMEOUT request - C 1, L 34-42); an wherein when an operation is being performed (an operation performed by the server which is delaying a reply to the client's request), the client is configured to prohibit determining that the server device is offline (C 1, L 42-45 - the client is prohibited in determining or identifying the server device is offline by retransmitting the request until an acknowledge is received from the server) until a second determination time elapses (TIMEOUT reply - C 1, L 50-56), wherein if no response is received from the vehicle controller within the second determination time, which is the time necessary to perform an operation, it is determined that communication is offline (C 1, L 50-56). This feature taught by Bapat provides an efficient and reliable means of communicating between two devices by ensuring that the devices receive the information in which it is designed to receive and by identifying when the devices have not received the information in which it is to receive. Bapat's system does not explicitly state that the second determination time is greater than the first determination time. Bapat teaches that these times are functions of time estimates and thus these values may be set as estimated (C 1, L 45-49, L 56-58 - the TIMEOUT request and the TIMEOUT reply values are functions of time estimates and thus the TIMEOUT reply value can be greater than the TIMEOUT request value when the estimation of how long the server should take to perform the desired operation is longer than the estimation of how long it should take to send an acknowledge back to the client). However, Frazier explicitly discloses a first determination time (RA_TOV) and a second

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determination time (LP_TOV) wherein the second determination time is greater than the first determination time (C 48, L 29-62, particularly L 39-41, 46-57). This feature taught by Frazier provides efficiency by waiting a sufficient duration to allow for multiple attempts to await a response (C 48, L 46-49). Hayashi discloses communicating between two devices; however, Hayashi does not provide any means for ensuring efficient and reliable data communication between them. Hence, it would have been obvious to one of ordinary skill in the art to use the combined teachings of Bapat and Frazier in the system taught by Hayashi for the desirable purpose of efficiency and reliability.

Regarding claims 4, 10, 16-17, 21 and 23-26, the system taught by Hayashi, Bapat and Frazier discloses acquiring an operation time prior to an operation and to set the second determination time to the operation time (Bapat - C 1, L 56-58, the operation time is acquired from the time estimation function); wherein when the operation is being performed, the determination of offline is prohibited until the second determination time that is set according to the operation time elapses (Bapat - C 1, L 42-45 - the client is prohibited in determining or identifying the server device is offline by retransmitting the request until an acknowledge is received from the server).

Regarding claims 6, 12, and 18, the system taught by Hayashi, Bapat and Frazier discloses an operation time is calculated based on an estimate of how long it should take the device to perform the desired operation (Bapat - C 1, L 56-58) and thus if the operation is a memory

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operation it is evident that the estimated time required to perform the operation would be consider the size of the data and the specification of the memory.

Allowable Subject Matter

4. Claim 27-28 are allowed.

Response to Arguments

5. Applicant's arguments filed have been fully considered but they are not persuasive. The Applicant states that the Examiner admits that Hyashi and Bapat fail to teach or suggest a rewriting device for rewriting data stored in a memory of a vehicle controller that prohibits determination that the vehicle controller is offline until a second determination time elapses that is greater than a first determined time period. The Examiner disagrees. The Examiner stated that Hyashi does not disclose the rewriting device configured to determine that communication between the rewriting device and the vehicle controller is offline when no response is received from the vehicle controller within a first determination time; wherein when a deleting/writing operation of data is being performed, the rewriting device is configured to prohibit the determination of offline until a second determination time elapses, the second determination time being greater than the first determination time, wherein if no response is received from the vehicle controller within the second determination time, which is the time necessary to delete data stored in the memory/write data in the memory, it is determined that communication is offline. Additionally the Examiner stated that Bapat teaches these features but did not explicitly teach the second determination time being greater than the first determination time.

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6. The arguments presented by the Applicant which state that Bapat teaches away from the teachings of Frazier appear to reason from a bodily incorporation standpoint. It should be noted, however, that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

7. The mere fact that Bapat discloses a particular protocol does not infer that Bapat teaches away from a different protocol call. It only establishes that this is the particular protocol that that inventor has chosen to use.

8. A 35 U.S.C. 103 rejection implies that all of the claimed limitations are not taught within one reference. Bapat is relied upon to teach the features not taught by Hyashi and Frazier is relied upon to teach the feature of a second determination time being greater than a first determination time. The combined references teach the claimed limitations. Hyashi clearly teaches a rewriting device as indicated above in the rejection.

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Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly N. McLean-Mayo whose telephone number is 703-308-9592. The examiner can normally be reached on M (10:00 - 6:30); Tues, Thr (10:00 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on 703-308-1756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly N. McLean-Mayo
Examiner
Art Unit 2187

KNM

October 2, 2004

KIMBERLY MCLEAN-MAYO
PRIMARY EXAMINER

A handwritten signature in cursive script, reading "Kimberly N. McLean-Mayo", written over the printed name and title.